Ohio Newspapers and the Law

A handbook and digest of Ohio laws and other material related to editing and writing for newspapers and other media

Assembled and Arranged by

JAMES E. POLLARD
Director, School of Journalism
Ohio State University

NO. 17, JOURNALISM SERIES

THE OHIO STATE UNIVERSITY
COLUMBUS 10, OHIO

FOREWORD

In the summer of 1954 the School of Journalism, in cooperation with the Ohio Newspaper Association, brought out Ohio Newspaper and Publication Laws, a 210-page volume born of the Revised Ohio Code. This work, in turn, was a revision of the earlier Newspaper Laws of Ohio, likewise the product of the joint effort of the School of Journalism and the Ohio Newspaper Association, which was published in 1937.

The 1954 volume contained the Bill of Rights provisions to be found in the United States and Ohio Constitutions, together with a general summary and discussion of the law of libel and the specific statutes dealing with libel. This summary was prepared under the direction of Paul R. Gingher, general counsel for the O.N.A. The co-editor of the volume was Ed M. Martin, for many years executive director of the O.N.A.

But this volume fell mainly into the hands of publishers and business managers of Ohio newspapers since it dealt with publishing generally and, in particular, with public notices or legal advertising as it is commonly called. It was with the thought, therefore, of making available to editing, copydesk and reporting staffs the material from the book pertinent to their day-to-day activities that this booklet was conceived. Its publication was made possible by a balance remaining from an earlier gift to the Ohio State University Development Fund.

In addition to the material from the earlier volume, further aspects and developments are covered here. One is the modified version of Canon 35 as adopted by the Ohio Supreme Court. Another is the so-called "open meetings" law first passed by the Ohio General Assembly in 1953 (effective January 31, 1954), and amended in 1955. The 1953 law made it mandatory to open the meetings of all state boards, agencies, commissions and other bodies, except the Pardon and Parole Commission, to the public, including the press. The 1955 amendment, adopted at the urging of the O.N.A. through its Freedom of Information Committee, brought this requirement down to the local level.

Acknowledgment is here made of the valuable help and advice given by William J. Oertel, executive secretary, O.N.A., in the compilation of this booklet.

J.E.P.

Columbus, Ohio
April 7, 1956

CONTENTS

		Page
1.	The Constitutions and Freedom of the Press	1
	a. United States	1
	b. Ohio	1
2.	The "Open Meetings" Law	1
3.	Photographs in the Courtroom	2
4.	The Ohio "Confidence" Law	3
5.	The Status of the Police Blotter and Court Records	4
6.	Names of Juveniles in News Stories	5
7.	Libel and Slander by Definition, Defenses, Etc.	5
8.	Other Provisions	14

1. The Constitutions and Freedom of the Press

U. S. CONSTITUTION

AMENDMENTS

Article I—Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; *or abridging the freedom of speech or of the press*; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

Article V—No person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, *nor be deprived of life, liberty or property, without due process of law*; nor shall private property be taken for public use without just compensation.

Article XIV—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, *nor shall any State deprive any person of life, liberty, or property without due process of law*, nor deny to any person within its jurisdiction the equal protection of the laws.

OHIO CONSTITUTION

Article I

Section II—*Of the Freedom of Speech; and of the Press; of Libels.* Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury, that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted.

2. The "Open Meetings" Law

At the urging of the Ohio Freedom of Information Committee on behalf of the Ohio Newspaper Association, the Ohio General Assembly during the 1953 session adopted an "open meetings" law. Under this statute all state boards, agencies, commissions and other public bodies, except the Pardon and Parole Commission, are required to hold open meetings so that the public and the press may attend if they desire and, in particular, so that public business is actually done in public and not behind closed doors. This does not prevent the holding of executive sessions but no final or definitive action can be taken except in public or open meetings, with the single exception of the Parole Commission.

At the next regular session of the General Assembly in 1955, the Freedom of Information Committee urged the extension of these provisions to the local level so as to cover county, township and municipal bodies and agencies. There was no opposition to the proposed amendment and it was passed.

The revised law, which is of great practical importance to the press and other mass communications media as well as the public, reads as follows:

> **Sec. 121.22.** All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, township, municipal corporation, school district or other political subdivision are declared to be public meetings open to the public at all times. No resolution, rule, regulation or formal action of any kind shall be adopted at any executive session of any board or commission of any such agency or authority.
>
> The minutes of a regular or special session or meeting of any board or commission of any such agency or authority shall be promptly recorded and such records shall be open to public inspection.
>
> The provisions of this act shall not apply to the pardon and parole commission when its hearings are conducted at a penal institution for the sole purpose of interviewing inmates to determine parole or pardon.

So far no serious issues have arisen to challenge the new law in any way although there have been some questionable situations involving "executive sessions." By indirection, however, the law permits such sessions but the important part is the provision that no formal or final action may be taken at any such session but must be done in open meetings.

A recent survey of all Ohio daily and weekly newspapers showed that since the passage of the law no newspaper had encountered serious difficulty in gaining admittance to meetings nor have the minutes of meetings been purposely delayed or witheld as occurred sometimes before the enactment of this law. The law, in short, seems to have achieved its purpose adequately and admirably with only a few exceptions.

Originally there was some question whether the law included legislative bodies after such specific wording was deleted from the amended version before it became law. But legislative bodies are generally regarded as "authorities" and as such are covered by the law as passed by the General Assembly. By longstanding practice, moreover, the meetings of legislative bodies are generally open to the public, including the press, although this is less true of some legislative committees. Until such time, therefore, as a court might decide otherwise—and this seems unlikely—it seems safe to assume that legislative bodies are included in the open meetings law as "authorities."

3. Photographs in the Courtroom

The much discussed Canon 35 which has to do with news cameras, radio broadcasts and telecasts in or from the courtroom is one of thirty-six rules governing judicial ethics adopted and recommended by the American Bar Association and adopted subsequently by the Ohio State Bar Association and those of other states. It was taken under advisement by the Ohio Supreme Court which modified it in important particulars and then adopted and promulgated it in its modified form. As such it has the force of law and, as Chief Justice Carl V. Weygandt explained at the time, not even the General Assembly has the power to modify or nullify it.

In its original form Canon 35 was much narrower than as finally modi-

fied and adopted by the Ohio Supreme Court. As it stands it still prohibits any broadcasting or telecasting from Ohio courtrooms at any time, but it gives the individual court considerable discretion as to the taking of news pictures except during actual sessions of the court. In this respect it amounts to a minimum rule. As modified by the Ohio Supreme Court, it reads:

> Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the courtroom during such proceedings and the broadcasting and the telecasting of such proceedings from the courtroom tend to detract from the essential dignity of the proceedings, distract the witness in giving his testimony and create misconception with respect thereto in the mind of the public and should not be permitted.

Early in 1956 the entire situation revolving around Canon 35 was in ferment. The Colorado Supreme Court modified the Canon in important particulars, leaving to individual courts the matter of taking news pictures even during court sessions. A Texas judge permitted the live telecast of an important murder trial in that state. Various Ohio judges, notably the common pleas judges of Cuyahoga County, urged the further modification of the Canon in this state, particularly as to news cameras in the courtroom. The Ohio Supreme Court, in effect, indicated its willingness to review the matter after the American Bar Association committee had reported on the subject at its annual meeting in the summer of 1956. In April, 1956, meanwhile a Trumbull County common pleas judge permitted a news picture to be taken of a hearing in his courtroom.

4. The Ohio "Confidence" Law

Although it is part of the general statute on Libel and Slander (Sec. 2739), the so-called Ohio "confidence" law is lifted out of context here because of its special importance. This law, adopted in the 'Thirties, provides important protection to the newspapermen in respect to the source of news. What this law does is to put the newspaperman on a par with the minister, the attorney and the physician in respect to their long recognized confidential relationship with their parishioners, clients and patients.

The law, in effect, guarantees that there is no power, even on the part of the courts, to compel or require a newspaperman to disclose the source of his information. Ohio is one of the minority of states which provides such statutory protection. Efforts have been made to get the General Assembly to extend this protection to radio newscasters but so far this has not been done. The law reads:

> 2739.12. Newspaper reporters not required to reveal source of information.
>
> No person engaged in the work of, or connected with, or employed by any newspaper or any press association for the purpose of gathering, procuring, compiling, editing, disseminating, or publishing news shall be required to disclose the source of any information procured or obtained by such person in the course of his employment, in any legal proceeding, trial, or investigation before any court, grand jury, petit jury, or any officer thereof, before the presiding officer of any tribunal, or his agent, or before any commission, department, division, or bureau of this state, or before any county or municipal body, officer or committee thereof.

5. The Status of the Police Blotter and Court Records

For some reason there has been dispute, and even misunderstanding, as to the legal status of the police blotter in Ohio as a source of news. The question has turned on whether the so-called blotter is a privileged source and whether newspapers and other news media enjoy the protection of qualified privilege against libel suits when they take news from the blotter. For years Ohio newspapers have operated on the belief that the blotter was privileged.

The answer seems clearly that they do. Yet libel suits are occasionally filed against Ohio newspapers growing out of news stories based on information spread on the blotter. Some competent legal authorities question whether the police blotter in Ohio is privileged. One such authority even lumps Ohio with six other states where, he wrote, the status of the blotter is such that not even the attorney general could rule on the matter with any finality.

Regardless of this doubt and dissent, the weight of authority and evidence seems to run in the other direction, i.e., that the police blotter in Ohio is privileged. This is supported by a recent court test in Torski v. Mansfield Journal Co. In this instance a libel suit was brought against the Mansfield *News-Journal.* It was based on a news story published in that paper and taken from the police blotter, concerning the arrest of the plaintiff who was exonerated later of the charge. The paper duly reported this fact also. The trial court sustained a motion for a directed verdict for the newspaper in the libel case on the ground that the Ohio statutes make police records privileged and there was no evidence that the newspaper "acted in some manner to deprive it of the privilege which is granted under the law." This finding was affirmed in January, 1956 by the court of appeals, and upheld in April, 1956 by the Ohio Supreme Court.

It should be noted, however, that the filing of new civil suits is not necessarily open to the press until a summons has been served upon the defendant. This was brought out in Painesville in March, 1956 when a common pleas judge in an unusual action took steps to enforce a court rule that prohibits the press from examining new civil suits until such a summons has been served. Specifically, court personnel was directed to close the files on new cases until the defendants had been served and the summonses returned and made a part of the record. The rule was invoked after the Cleveland *Plain Dealer* had published the news of a suit for alienation of affections before the defendant had been served. The court explained that the rule was to keep defendants from learning through the press that they had been sued and perhaps leave the county or hide so that action could not begin.

In the Revised Ohio Code there are actually two sections which bear on the important matter of the police blotter. They are in Chapter 2317: Evidence, and are Sections 2317.04 and 2317.05. They follow:

> 2317.04—Impartial report of proceedings privileged.
>
> The publication of a fair and impartial report of the proceedings before state or municipal legislative bodies, or before state or municipal executive bodies, boards or officers, or the whole or a fair synopsis of any bill, ordinance, report, resolution, bulletin, notice, petition, or other document presented, filed, or issued in any proceeding before such legislative or executive body, board, or officer, shall be privileged, unless it is proved that such publication was made maliciously.
>
> 2317.05—Impartial report of indictment, warrant, affidavit, or arrest privileged.
>
> The publication of a fair and impartial report of the return of any

indictment, the issuing of any warrant, the arrest of any person accused of crime, or the filing of any affidavit, pleading, or other document in any criminal or civil cause in any court of competent jurisdiction, or of a fair and impartial report of the contents thereof, is privileged, unless it is proved that the same was published maliciously, or that the defendant has refused or neglected to publish in the same manner in which the publication complained of appeared, a reasonable written explanation or contradiction thereof by the plaintiff, or that the publisher has refused, upon request of the plaintiff, to publish the subsequent determination of such suit or action. This section and section 2317.04 of the Revised Code do not authorize the publication of blasphemous or indecent matter.*

6. Names of Juveniles in News Stories

For some years it has been the nearly uniform practice of Ohio newspapers not to use the names of juvenile offenders until after conviction and sentence and very often not then except in the case of serious offenses or flagrant offenders. This practice has been so strong that an impression grew up that there is a law prohibiting the use of such names. Actually there is no such law in Ohio.

Some papers have made it a practice to use names of offenders who are 18 years old or older, but under 21. Still others use the names of those who are 16 years old or more.

The matter came to a head early in 1956 when a judge at Gallipolis held in contempt two local newspapermen, the city editor and a reporter, when the paper used the names of several juvenile offenders following conviction. The citation against the reporter was dropped, but the editor was found in contempt and fined. The case was promptly taken on appeal and an early decision at that level was anticipated.

In a somewhat parallel case in 1937 involving the Akron *Times-Press*, a contempt finding against the editor of that paper for publishing the names of members of the grand jury and of witnesses expected to appear before it was reversed by the court of appeals for that district. The contention of the court in the Gallipolis case that a state law forbade the use of such names appeared to be highly erroneous.

In any case, there has been an increasing tendency on the part of Ohio newspapers in recent years to use the names of juvenile offenders where by way of example or otherwise the circumstances seemed to warrant it.

7. Libel and Slander by Definition, Defenses, Etc.

LIBEL

The following text and annotations of case law are not intended to be, nor should they be taken as, an exhaustive treatment of the subject of libel nor as a substitute for the employment of legal counsel.

For various reasons, material relating to slander, other than the definition of slander, has been eliminated, except in so far as the principles announced in cases dealing with slander also apply in libel.

* In Cleveland, in March, 1956 a jury returned a directed verdict for $50,000 in favor of a woman who had sued a newspaper for libel. The court held that publication of allegations in a divorce petition violated the provision that "indecent or blasphemous charges" even though from a court-recorded document are libelous.

Inclusion of the material on libel is designed merely to give a general view of the field of libel as a matter of information. As specific problems arise, it is suggested that the reader's counsel consult the several annotated codes for more comprehensive annotations.

Slander per se consists of words spoken of another which are false and (1) charge an indictable offense involving moral turpitude or infamous punishment or (2) impute some offensive or contagious disease calculated to deprive the person of society or (3) tend to injure him in his trade, occupation or profession or (4) affect the chastity of a woman. In slander per se, the injured person does not need to allege and prove special damages in order to recover. The words themselves must be such that the natural tendency is to produce injury.

False spoken words which do not naturally tend to produce injury, but which with explanation fall into the above categories and produce injury are said to be slanderous per quod, for which the injured person may recover upon pleading and proving special damages.

Libel per se has been defined as a false and malicious publication against a person either in print or in writing or by pictures, with intent (1) to injure his reputation or (2) to expose him to public hatred, contempt or ridicule or (3) to affect him injuriously in his trade, business or profession. The injured person need not allege and prove special damage in order to recover. The words published must inherently tend to produce the injury complained of.

Libel per quod relates to a publication falling into one of the above categories, but which requires explanation because the words do not inherently tend to produce the injury complained of. The injured person must allege and prove special damage in order to recover.

Other statutory provisions contained below in this book provide for certain defenses to actions for libel. Certain other defensive matter may be used to mitigate or reduce damages. The annotations hereinafter set out will indicate some of the defenses to an action for libel.

LIBEL

Definition

Libel is any false and malicious publication of, and concerning anyone, either in print, writing or by pictures, with intent to injure his reputation and expose him to public hatred, contempt or ridicule; anything written or printed which reflects upon the character of another and is published without lawful justification or excuse is a libel, whatever the intention may have been. (1906) *Mengert v. News Printing Co.*, 50 Bull. 4.4

SLANDER

Definition

Words imputing the guilt or commission of some criminal offense involving moral turpitude and infamous punishment, or words imputing the existence of some contagious disease, or the unfitness in an officer who holds an office of profit or emolument, either in respect of morals or inability to discharge the duties thereof, or words imputing a want of integrity or capacity, whether mental or pecuniary, in the conduct of a trade or profession, trade, or business, or words imputing want of chastity, are actionable per se. (1920 *Slavinas v. Ambrose*, 27 N.P. (N.S.) 279.

LIBEL

In General

In action for libel, question is whether publication is calculated to

lead persons reading it to believe it referred to plaintiff, not whether publication referred to plaintiff. (1930) *Woolf v. Scripps Pub. Co.*, 35 App. 343, 172 N.E. 389, 32 O.L.R. 519.

A cause of action is stated, in a petition alleging that the publisher of a newspaper caused to be printed and published an article concerning a heinous crime, connecting a named individual with that crime, and maliciously, carelessly, and negligently printing a picture of the plaintiff as the picture of the man charged with connection with the crime. Such a printing and publishing is libelous. (1935) *Petransky v. Repository Printing Co.*, 51 App. 306, 4 O.O. 507, 200 N.E. 647.

Printed words of ridicule or contempt, which relate solely to political views, or arguments on questions of public interest, which do not attack the character of a person, or impute to him immorality or a violation of the law, but which tend merely to lessen a man in public esteem, or to wound his feelings, are not actionable without alleging special damages. (1941) *Sweeney v. Beacon Journal Publishing Co.*, 66 App. 475, 20 O.O. 486, 35 N.E. (2d) 471.

Whatever spoken words will sustain a suit for slander, will, if written, sustain a suit for libel if they are written and published, and many charges not slanderous, will, if written, sustain an action in libel if the tendency of the publication, being malicious, is to degrade and lessen the standing of the person of whom the publication is made. (1950) *Ward v. League for Justice*, 57 O.L.A. 197, 93 N.E. (2d) 723 (App.).

An article must be considered as a whole in determining whether it is libelous. (1919) *Tappmeyer v. Journal-Republican Co.*, 22 N.P. (N.S.) 337, 31 O.D. 32. (1909) *Shallenberger v. Scripps Pub. Co.*, 8 N.P. (N.S.) 633, 20 O.D. 651.

The publication of a person's portrait in a newspaper with a statement thereunder concerning the implication of another person with a crime, causing the person whose portrait was published to be discharged from his employment, was held to be actionable although published by mistake. (1935) *Petransky v. Vindicator Printing Co.*, 20 O.L.A. 82.

Words libelous per se.

To publish that a person is said to have been in the workhouse and have a criminal record is libelous per se. (1893) *Post. Pub. Co. v. Moloney*, 50 O.S. 71, 33 N.E. 921.

Where in an action for libel no special damages are alleged, the article complained of is either a libel per se or it is not a libel at all. (1910) *Hunt v. Meridian Printing Co.*, 17 C.C. (N.S.) 293, 32 C.D. 151.

An article is libelous per se when, if believed by the community to be true, it will work substantial harm. (1903) *Mauk v. Brundage*, 68 O.S. 89, 67 N.E. 152, 62 L.R.A. 477.

Publication of a preamble to an order of the board of health as to the conduct of physicians and surgeons, charging carelessness and negligence in certain cases, is libelous per se. (1903) *Mauk v. Brundage*, 68 O.S. 89, 67 N.E. 152, 62 L.R.A. 477.

A newspaper publication which charges a policeman with having taken money from a prisoner, for which he had refused to account, charges a crime involving moral turpitude and is libelous per se. (1906) *Todd v. East Liverpool Pub. Co.*, 9 C.C. (N.S.) 249, 19 C.D. 155.

To constitute a publication respecting a person libelous per se, it must appear that the publication reflects upon the character of such person by bringing him into ridicule, hatred, or contempt, or affects him injuriously in his trade or profession; hence, a published statement, in a news-

paper of and concerning a woman, that she "had hysterics," the same not containing any imputation upon her as an individual, or in respect to her profession or business, is not, though untrue, per se libelous, and cannot be made a ground of recovery of damages in the absence of proof of special damage. (1911) *Cleveland Leader Printing Co. v. Nethersole*, 84 O.S. 118, 95 N.E. 735.

The following libels are libelous per se: (1) libels which impute to a person the commission of an indictable offense, involving moral turpitude or infamous punishment; (2) that which has a tendency to hold a person up to scorn and ridicule, and to feelings of contempt, or impair one in the enjoyment of general society; and (3) that which has a tendency to injure one in his office, trade, calling or profession. (1915) *G. M. McKelvey Co. v. Nanson*, 5 App. 73, 24 C.C. (N.S.) 314, 26 C.D. 390.

Publication of statements concerning a candidate for judge that "he does not possess the essential qualifications to serve in the office which he seeks," and "in our opinion he is not qualified for the bench and should not be elected," is not libel per se. (1934) *Hogan v. Forest City Pub. Co.*, 10 O.L.A. 127.

It is libelous per se to erroneously write that a person is a communist or of communistic sympathy. (1948) *Burrell v. Moran*, 38 O.O. 185, 82 N.E. (2d) 334 (C.P.).

It is libelous per se to write of a man as a communist, that label tending to taint him as a man of disrepute. (1950) *Ward v. League for Justice*, 57 O.L.A. 197, 93 N.E. (2d) 723 (App.)

Printed words of ridicle or contempt, which relate solely to political views or arguments on questions of public interest, and which do not attack the character of a person and do not impute immorality or a violation of law, but merely tend to lessen a man in public esteem or to wound his feelings, are not libelous per se. (1919) *Holloway v. Scripps Pub. Co.*, 11 App. 226, 30 O.C.A. 599.

Imputations Relating to Employment or Office.

It is libelous per se falsely to impute to a person in his character as a public officer misconduct or a want of integrity or to charge that he has been induced to act in his official capacity by a pecuniary or other improper consideration. (1947) *Westropp v. E. W. Scripps Co.*, 148 O.S. 365, 35 O.O. 341, 74 N.E. (2d) 340.

A simple statement that a person is disloyal in connection with his employment is not libelous per se. (1952) *Johnson v. Campbell*, 91 App. 433, 49 O.O. 68, 108 N.E. (2d) 749.

Malice

Unless the article published was entirely true, the law implies malice and liability will attach and the plaintiff can recover damages. (1890) *Kahn v. Cincinnati Times-Star*, 8 N.P. 616, 10 O.D. 599.

Where the published words are actionable per se, the law will imply malice of the character necessary to support a judgment for plaintiff; in order to make out a prima facie case, actual malice need not be proved. (1947) *Westropp v. E. W. Scripps Co.*, 148 O.S. 365, 35 O.O. 341, 74 N.E. (2d) 340.

PUBLICATION

What constitutes.

Printing a libel, coupled with allowing others to read it, or delivering it for distribution, is publishing. (1845) *Pugh v. Starbuck*, 1 Dec. Rep. 143, 2 W.L.J. 503.

DEFENSES

Statements Made by Another.

A newspaper publication charging a crime involving moral turpitude does not lose its libelous character by reason of the fact that it was a mere repetition of what others had said. (1906) *Todd v. East Liverpool Pub. Co.*, 9 C.C. (N.S.) 249, 19 C.D. 155.

Truth of Charge.

When charge is alleged in petition, defense that it is true must meet and answer the substance of the defamatory charge, substantial justification being sufficient. (1925) *Lowry v. Stantz*, 3 O.L.A. 375.

Matters of Public Concern.

A libelous charge against a public officer cannot be defended by the newspaper printing it on the ground that it was of public interest and, as such, was privileged, but to make the defense of privilege available it must be shown that reasonable diligence was used to ascertain the truth of the charge and that it was published in good faith. (1906) *Todd v. East Liverpool Pub. Co.*, 9 C.C. (N.S.) 249, 19 C.D. 155.

Broad immunity is conferred upon the discussion of matters of public concern in the form of expressions of opinion, but the rule that fair comment on the criticism of the acts and conduct of a public officer are, in the absence of malice, privileged, has no application where the written publication complained of is a false statement of fact and made with knowledge that it is false. (1947) *Westropp v. E. W. Scripps Co.*, 148 O.S. 365, 35 O.O. 341, 74 N.E. (2d) 340.

Where an act is really done by an officer, the public press may comment upon it and bring it up before the public for public condemnation, if it is wrongful. (1906) *Todd v. East Liverpool Pub. Co.*, 9 C.C. (N.S.) 249, 19 C.D. 155.

Criticism of a public officer, even to the point of severity or ridicule, and deductions from his acts and conduct where made with a show of reason and with good motives, do not fall within the realm of libel. (1909) *State v. Harris*, 7 O.L.R. 626, 56 Bull. 86.

General Code Sec. 11343-1 and 11343-2, which provide that the publication of fair and impartial reports of proceedings before executive, legislative or judicial officials is privileged, are valid and constitutional. (1917) *Heimlich v. Dispatch Printing Co.*, 6 App. 394, 27 O.C.A. 333, 29 C.D. 149. (1898) *Parks v. Enquirer Co.*, 16 C.C. 409, 8 C.D. 621.

Comment on Candidates.

While a candidate for public office does not thereby waive all rights of action for injuries to his reputation, he gives to the general public a right to employ a greater freedom of expression concerning his qualifications and characteristics than would have been permissible had he not been a candidate. (1915) *Foster v. Fesler*, 19 N.P. (N.S.) 12, 27 O.D. 127.

Miscellaneous.

A newspaper has no greater right to comment on and criticize a public officer than an individual has. If facts are charged against him and are untrue, they cannot be called criticism. (1882) *Cincinnati Gazette Co. v. Bishop*, 6 Dec. Rep. 1113, 10 Am.L. Rec. 488, 8 Dec.Rep. 308, 7 Bull. 60. (1879) *Wahle v. Cincinnati Gazette Co.*, 6 Dec.Rep. 709, 7 Am.L.Rec. 541, 7 Dec.Rep. 581, 4 Bull. 61.

Presumptions.

The defense of truth pleaded in a libel action casts upon the defendant the burden of going forward with his evidence, there being a presumption of fact that character and reputation are good and therefore that imputations to the contrary are false. (1935) *Dabney v. Russell*, 50 App. 43, 8 O.O. 175, 107 N.E. 409.

Ohio App. 1935. Where a publication is libelous per se, malice will be presumed notwithstanding the reference to plaintiff and the publication of plaintiff's picture in connection with the libelous publication was a mistake on the part of defendant's editor. *Petransky v. Repository Printing Co.*, 200 N.E. 647, 51 Ohio App. 306, 4 O.D. 507, 20 O.L.A. 82.

Ohio App. 1925. Where words concerning plaintiff are false, law infers malice, and where their natural tendency is to injure, law presumes damages. *Peer v. Hoiles*, 3 O.L.A. 653.

CHAPTER 2739: SLANDER: LIBEL*

2739.01—Libel and slander.

In an action for a libel or slander, it is sufficient to state, generally, that the defamatory matter was published or spoken of the plaintiff. If the allegation is denied, the plaintiff must prove the facts, showing that the defamatory matter was published or spoken of him. In such action it is not necessary to set out any obscene word, but it is sufficient to state its import.

2739.02—Defense in actions for libel or slander.

In an action for a libel or a slander, the defendant may allege and prove the truth of the matter charged as defamatory. Proof of the truth thereof shall be a complete defense. In all such actions any mitigating circumstances may be proved to reduce damage.

2739.03—Libel and slander liability of radio and television stations.

(A) The owner, licensee, or operator of a visual or sound radio broadcasting station or network of stations, shall not be liable for any damages for any defamatory statement uttered over the facilities of such station or network by or on behalf of any candidate for public office where such statement is not subject to censorship or control by reason of any federal statute or any ruling or order of the Federal Communications Commission made pursuant thereto, provided, however, that this section shall not apply to any owner, licensee or operator of such visual or sound radio broadcasting station, or network of stations, when such owner, licensee, or operator is a candidate for public office or speaking on behalf of a candidate for public office.

(B) The owner, licensee, or operator, shall not be liable for any damages for any defamatory statement published or uttered in or as a part of a visual or sound radio broadcast, by any other than such owner, licensee, or operator, or agent or employee thereof, if it shall be proved by such owner, licensee, or operator, that he exercised reasonable care to prevent the publication or utterance of such statements in such broadcast time.

(C) If any broadcasting station, at any time, broadcasts, publishes,

* All of the matter that follows is from the Revised Ohio Code.

or circulates any false statement, allegation, or rumor pertaining or relating to any individual or association of individuals, or to any trade, labor, business, social, economic or religious organization or to any firm, corporation, or business, or to any public official or candidate for a public office, the said broadcasting station upon demand of any person or persons affected or of their representatives shall broadcast any statement setting forth in proper language the truth pertaining to such statement, allegation, or rumor, which said person or persons or their representatives shall offer to said broadcasting station for broadcast.

(D) Whenever demand has been made for the broadcast of a statement under division (C) of this section, the broadcasting station shall broadcast the same within forty-eight hours following the receipt of such statement. Such statement shall be phrased in proper language and be broadcast without any additions to, or omissions therefrom, in as prominent a time as the original broadcast to which the statement relates. Said broadcasting station shall broadcast such statement without cost to such persons or their representatives; and such broadcast may be proved at the trial of a suit for damages as a mitigating circumstance to reduce damages, provided that any voluntary broadcast made without demand may be used to rebut any presumption of malice or injury on the part of such station growing out of the original broadcast to which the same related. This section does not prevent the injured party from alleging and proving actual malice on the part of the owner, licensee, or operator, and any special damages resulting to him therefrom.

(E) Every statement which broadcasting stations are required to broadcast under division (C) of this section shall be sworn to by the person offering the same for broadcast, but the certificate of the notary or other official showing that the statement was so made under oath, shall not be broadcast.

No person shall willfully swear falsely to any such statement and whoever does so, is guilty of perjury and shall be punished as provided in division (F) of section 2739.99 of the Revised Code.

No broadcasting station shall be held liable in any civil or criminal proceedings for anything in any such statement.

(F) No broadcasting station shall refuse or fail to broadcast and circulate any statement or article if true as required by division (C) of this section.

(G) Any person responsible for refusing to broadcast and circulate any statement mentioned in division (C) of this section, shall be fined as provided in division (H) of section 2739.99 of the Revised Code.

The prosecuting attorney of the county in which such broadcasting station is located when complaint is made to him in writing of the refusal or failure of any such broadcasting station or person to comply with divisions (C), (D), (E), (F), and (G) of this section, relative to the broadcasting of such statements, shall investigate said complaint and upon reasonable cause begin proceedings against such broadcasting station or person and prosecute the same.

2739.11—Definitions.

Any person, firm, partnership, voluntary association, joint-stock association, or corporation, wherever organized or incorporated, engaged in the business of printing or publishing a newspaper, magazine, or other periodical sold or offered for sale in this state, is a newspaper company, and any such newspaper, magazine, or other periodical publication is a newspaper within the meaning of sections 2739.13 to 2739.18, inclusive, of the Revised Code.

2739.13—Correction of false statement formerly published.

If any newspaper company, at any time, prints, publishes, or circulates any false statement, allegation, or rumor relating to any individual or association of individuals, or to any trade, labor, business, social, economic, or religious organization or to any firm, corporation, or business, or to any public official or candidate for a public office, such company upon demand of any persons affected or of their representatives, shall print, publish, and circulate any statement or article setting forth in proper language the truth pertaining to such statement, allegation, or rumor, which such persons or their representatives shall offer to such company for publication.

2739.14—Publishing corrected statements.

Whenever demand has been made for the publication of statements or articles under section 2739.13 of the Revised Code, the newspaper company shall print and circulate the same in the next regular issue or within forty-eight hours following the receipt of such statement or article. Such statement or article shall be phrased in proper language and be printed without any addition to, or omissions therefrom, in the same color of ink, from like type, and with headlines of equal prominence, occupying a like space in the same portion of the newspaper as was used in printing the original article complained of, and shall be given the same publicity in all respects and, as nearly as possible, the same circulation as such original article. Such company shall print and publish such statements or article without cost to such persons or their representatives; and such publication may be proved at the trial of a suit for damages as a mitigating circumstance to reduce damages, provided that any voluntary publication made without demand may be used to rebut any presumption of malice or injury on the part of such company growing out of the original publication to which the same related. This section does not prevent the injured party from alleging and proving actual malice on the part of the publisher and any special damages resulting therefrom.

2739.15—Published statements shall be sworn to.

(A) Every statement or article which newspaper companies are required to publish under sections 2739.13 to 2739.18, inclusive, of the Revised Code, shall be sworn to by the person offering the same for publication, but the certificate of the notary or other official showing that the statement was so made under oath, shall not be published.

(B) No person shall willfully swear falsely to any such statement or article and whoever does so, is guilty of perjury.

No newspaper company shall be held liable in any civil or criminal proceedings for anything in such statement or article.

2739.16—Refusal or failure to publish.

(A) No newspaper company shall refuse or fail to print, publish, and circulate any statement or article if true as required by sections 2739.13 to 2739.18, inclusive, of the Revised Code.

(B) Any person responsible for refusing to print, publish, and circulate any statement or article mentioned in division (A) of this section shall be fined as provided in division (C) of section 2739.99 of the Revised Code.

The prosecuting attorney of the county in which such newspaper is published, when complaint is made to him in writing of the refusal or failure of any newspaper company or persons to comply with sections 2739.13 to 2739.18, inclusive, of the Revised Code, relative to the publica-

tion of such statements or articles, shall investigate said complaint and upon reasonable cause begin proceedings against such newspaper company or person and prosecute the same.

2739.17—Prohibition against furnishing false news item.

No person shall contribute or furnish any statement, allegation, or news item to a newspaper, knowing that such a statement, allegation, or news item is untrue. Prosecution under this section shall be upon complaint of such newspaper company or any person injured in property, person, or reputation by the publication of such statement, allegation, or news item.

2739.18—Prohibition against threats of publication to influence official action.

No newspaper company, or owner, officer, editor, writer, or representative thereof, shall attempt improperly to influence any public official for or against any public measure or official action by threats of publication of articles derogatory to such public official, or seek improperly to influence such public official on the floor or in the cloakrooms or committee rooms of any general assembly or other legislative body, to which he has access because of his connection with the newspaper, for or against any proposed law, ordinance, or other legislative act.

2739.99—Penalties.

(A) Whoever violates division (B) of section 2739.15 of the Revised Code shall be fined not more than five hundred dollars or imprisoned not more than one year, or both.

(B) Whoever violates division (A) of section 2739.16 of the Revised Code shall be fined not more than one thousand dollars.

(C) Whoever violates division (B) of section 2739.16 of the Revised Code shall be fined not more than five hundred dollars.

(D) Whoever violates section 2739.17 of the Revised Code shall be fined not more than five hundred dollars or imprisoned not more than six months, or both.

(E) Whoever violates section 2739.18 of the Revised Code, shall be fined not more than one thousand dollars or imprisonment not more than one year, or both.

(F) Whoever violates division (E) of section 2739.03 of the Revised Code shall be fined not more than five hundred dollars or imprisoned not more than one year, or both.

(G) Whoever violates division (F) of section 2739.03 of the Revised Code shall be fined not more than one thousand dollars.

(H) Whoever violates division (G) of section 2739.03 of the Revised Code shall be fined not more than five hundred dollars.

TITLE XXIX: CRIMES—PROCEDURES

CHAPTER 2901: OFFENSES RELATING TO PERSONS

2901.37—Libel.

No person shall write, print, or publish a false or malicious libel of, or concerning, another, or utter or publish a false or malicious slander of, or concerning a female of good repute, with intent to cause it to be believed that such female is unchaste.

Whoever violates this section shall be fined not more than five hundred dollars or imprisoned not more than five years, or both. Nothing written or printed is a libel unless there is a publication thereof.

8. Other Provisions

CHAPTER 2905: OFFENSES AGAINST CHASTITY

2905.34—Selling, exhibiting, and possessing obscene literature or drugs for criminal purposes.

No person shall knowingly sell, lend, give away, exhibit, or offer to sell, lend, give away, or exhibit, or publish or offer to publish or have in his possession or under his control an obscene, lewd, or lascivious book, magazine, pamphlet, paper, writing, advertisment, circular, print, picture, photograph, motion picture film, or book, pamphlet, paper, magazine not wholly obscene but containing lewd or lascivious articles, advertisements, photographs, or drawing, representation, figure, image, cast, instrument, or article of an indecent or immoral nature, or a drug, medicine, article or thing intended for the prevention of conception or for causing an abortion, or advertise any of them for sale, or write, print, or cause to be written or printed a card, book, pamphlet, advertisement, or notice giving information when, where, how, of whom, or by what means any of such articles or things can be purchased or obtained, or manufacture, draw, print, or make such articles or things, or sell, give away, or show to a minor, a book, pamphlet, magazine, newspaper, story paper, or other paper devoted to the publication, or principally made up, of criminal news, police reports, or accounts of criminal deeds, or pictures and stories of immoral deeds, lust, or crime, or exhibit upon a street or highway, in a place which may be within the view of a minor, any of such books, papers, magazines, or pictures.

Whoever violates this section shall be fined not less than two hundred nor more than two thousand dollars or imprisoned not more than seven years, or both.

2905.36—Sending obscene literature by mail.

No person shall deposit in a post office, or place in charge of a person to be carried or conveyed, any of the obscene, lewd, indecent, or lascivious articles or things named in section 2905.34 of the Revised Code, or a circular, handbill, card, advertisement, book, pamphlet, or notice of the kind specified in said section, or give oral information where, how, or of whom such obscene, lewd, indecent, or lascivious articles or things can be purchased or obtained or knowingly receive any of them with intent to carry or convey, or knowingly carry or convey them, except in the United States mail.

Whoever violates this section shall be fined not less than fifty nor more than one thousand dollars or imprisoned not more than one year, or both.

2905.39—Printing or posting immoral pictures.

No person shall make or print in or upon his premises, or post, publish, or exhibit in or upon a building, billboard, bridge, or fence where it can be publicly seen, a picture or figure that is lascivious, indecent, immoral,

or impure, or which represents crime or lust, or tends to corrupt morals, or permit such an act to be done by another in or upon his premises, building, billboard, bridge, or fence * * * *

This section does not apply to the printing and publication in book or or magazine form of illustrations for scientific purposes.

CHAPTER 2909: OFFENSES AGAINST PROPERTY—MALICIOUS AND OTHER INJURIES

2909.10—Destroying books or paintings.

No person shall intentionally deface, obliterate, tear, or destroy, in whole or in part, or cut or remove an article or advertisement or any page or part of any, scientific material, newspaper, book, magazine, or periodical belonging to another person, association, corporation, or public library, or intentionally deface, obliterate, or destroy, in whole or in part, any picture, painting, sculpture, statue, monument, or any work of art or reproduction of a work of art, belonging to another person, association, corporation, museum, or public library * * * *

CHAPTER 2911: FRAUDS

2911.03—False statements.

No person shall knowingly make or cause to be made, either directly or indirectly, or through any agency, any false statement in writing, with intent that it shall be relied upon, or, knowing that a false statement in writing has been made by another with such intent, respecting the financial condition, property, indebtedness, means, or ability to pay, of himself or any other person, firm or corporation, in which he is interested or for which he is acting, and upon the faith thereof procure, by himself or by some other person for or in collusion with him or with his knowledge, in any form, either the delivery of personal property, or chose in action, the payment of money, the making of a loan or credit, the extension of a credit, the discount of an account receivable, or the making, acceptance, discount, or indorsement of a bill of exchange, promissory note, or other commercial paper, either for the benefit of himself, or such person, firm, or corporation.

Whoever violates this section shall be fined not more than one thousand dollars or imprisoned not more than six years, or both, if the value of the thing procured or the amount of the loan, credit, or benefit procured is sixty dollars or more. If the value is less than sixty dollars, such person shall be fined not more than three hundred dollars or imprisoned not more than ninety days, or both.

2911.07—Reporting false transaction.

No person shall, with intent to deceive, report or publish or cause to be reported or published as a purchase or sale of stocks or bonds, any transaction therein, whereby no actual change of ownership or interest is effected.

Whoever violates this section shall be fined not more than five thousand dollars or imprisoned not more than one year, or both.

2911.08—False statements concerning value of stocks, bonds, or notes.

No person shall, with intent to deceive, make, issue, publish, or cause to be made, issued or published, any statement or advertisement as to the value or as to facts affecting the value of stocks, bonds, or notes, or as

to the financial condition of any corporation issuing the same knowing or having reasonable ground to know that any material representation, prediction, or promise made in such statement is false.

Whoever violates this section shall be fined not more than five thousand dollars or imprisoned not more than three years, or both.

2911.30—Publishing fraudulent prospectus.

No person shall knowingly make or publish, or permit or cause to be made or published, a book, prospectus, notice, report, statement, exhibit, or other publication of or concerning the affairs, financial condition, or property of a corporation, joint-stock association, partnership, or individual, containing a statement which is false or willfully exaggerated and intended to deceive any person as to the real value of any shares, bonds, or property of said corporation, joint-stock association, partnership, or individual.

Whoever violates this section shall be fined not less than one hundred or more than ten thousand dollars or imprisoned not less than one nor more than five years, or both.

2911.41—Fraudulent advertising.

No person shall directly or indirectly make, publish, disseminate, circulate, or place before the public, in this state, in a newspaper, magazine, or other publication, or in the form of a book, notice, handbill, poster, circular, pamphlet, letter, sign, placard, card, label, or over any radio station, or in any other way, an advertisement or announcement of any sort regarding merchandise, securities, service, employment, real estate, or anything of value offered by him for use, purchase, or sale, and which advertisement or announcement contains any assertion, representation, or statement which is untrue, or fraudulent.

Whoever violates this section shall be fined not more than two thousand dollars or imprisoned not more than twenty days, or both.

2911.42—Prosecuting attorney may bring action for fraudulent advertising.

Whenever a prosecuting attorney believes from evidence satisfactory to him that any person, firm, corporation, or association, or agent or employee thereof, has repeatedly engaged in any act or practice prohibited by section 2911.41 of the Revised Code, he may bring an action in the name and on behalf of the state against such person, firm, corporation, or association, or agent or employee thereof, to enjoin permanently such person, firm, corporation, or association, or agent or employee thereof, from continuing such acts or practices. In said action, upon a hearing on the merits, an order or a judgment may be entered awarding the relief applied for or so much thereof as the court finds proper.

CHAPTER 2915: GAMBLING

2915.19—Advertising lotteries, venue.

No person shall write, print, or publish an account of a lottery or scheme of chance, by whatsoever name, style, or title denominated or known, stating when or where it is to be or has been drawn, or the prices therein, or any of them, or the price of a ticket, or showing where a ticket may be or has been obtained, or giving publicity to such lottery or scheme of chance.

Whoever violates this section is liable to prosecution in each county where such publication was circulated by him.

CHAPTER 2923: OFFENSES AGAINST SOCIETY NOT OTHERWISE CLASSIFIED

2923.13—Advocating criminal syndicalism.

No person shall by word of mouth or writing, advocate or teach the duty, necessity, or propriety of crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform; or print, publish, edit, issue, or knowingly circulate, sell, distribute, or publicly display any book, paper, document, or written matter in any form, containing or advocating, advising or teaching the doctrine that industrial or political reform should be brought about by crime, sabotage, violence, or unlawful methods of terrorism; or openly, willfully, and deliberately justify, by word of mouth or writing, the commission or the attempt to commit crime, sabotage, violence, or unlawful methods of terrorism with intent to exemplify, spread or advocate the propriety of the doctrine of criminal syndicalism; or organize or help to organize or become a member of, or voluntarily assemble with any society, group, or assemblage of persons formed to teach or advocate the doctrines of criminal syndicalism.

Whoever violates this section shall be fined not more than five thousand dollars or imprisoned not more than ten years, or both.

CHAPTER 3517: CAMPAIGNS, POLITICAL PARTIES

3517.07.—Parties or groups engaged in un-American activities barred from ballot.

No political party or group which advocates either directly or indirectly, the overthrow, by force or violence, of our local, state, or national government or which carries on a program of sedition or treason by radio, speech, or press * * * *

CHAPTER 3599: OFFENSES AND PENALTIES

3599.08—Influencing candidates and voters by publication.

No owner, editor, writer, or employee of any newspaper, magazine, or other publication of any description, whether published regularly or irregularly, shall use the columns of any such publication for the printing of any threats, direct or implied, in the columns of any such publication for the purpose of controlling or intimidating candidates for public office. Such person shall not directly or indirectly solicit, receive, or accept any payment, promise, or compensation for influencing or attempting to influence votes through any printing matter, except through matter inserted in such publication as "paid advertisement" and so designated.

Whoever violates this section is guilty of a corrupt practice and shall be fined not less than five hundred nor more than one thousand dollars.

3599.09—Political publication must be identified.

No person shall write, print, post, or distribute, or cause to be written, printed, posted, or distributed, a notice, placard, dodger, advertisement, or any other form of publication which is designed to promote the nomination or election or defeat of a candidate, or the adoption or defeat of any issue, or to influence the voters in any election, unless there appears on

such form of publication in a conspicuous place either the names of the chairman or secretary of the organization issuing the same or some voter who is responsible therefor with his name and address.

Whoever violates this section shall be fined not less than one hundred nor more than one thousand dollars.